

HENRY A. WAXMAN, CALIFORNIA
EDWARD J. MARKEY, MASSACHUSETTS
RICK BOUCHER, VIRGINIA
EDOLPHUS TOWNS, NEW YORK
FRANK PALLONE, JR., NEW JERSEY
BART GORDON, TENNESSEE
BOBBY L. RUSH, ILLINOIS
ANNA G. ESHOO, CALIFORNIA
BART STUPAK, MICHIGAN
ELIOT L. ENGEL, NEW YORK
ALBERT R. WYNN, MARYLAND
GENE GREEN, TEXAS
DIANA DEGETTE, COLORADO
VICE CHAIRMAN
LOIS CAPPS, CALIFORNIA
MIKE DOYLE, PENNSYLVANIA
JANE HARMAN, CALIFORNIA
TOM ALLEN, MAINE
JAN SCHAKOWSKY, ILLINOIS
HILDA L. SOLIS, CALIFORNIA
CHARLES A. GONZALEZ, TEXAS
JAY INSLEE, WASHINGTON
TAMMY BALDWIN, WISCONSIN
MIKE ROSS, ARKANSAS
DARLENE HOOLEY, OREGON
ANTHONY D. WEINER, NEW YORK
JIM MATHESON, UTAH
G.K. BUTTERFIELD, NORTH CAROLINA
CHARLIE MELANCON, LOUISIANA
JOHN BARROW, GEORGIA
BARON P. HILL, INDIANA

DENNIS B. FITZGIBBONS, CHIEF OF STAFF
GREGG A. ROTHSCHILD, CHIEF COUNSEL

ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

JOHN D. DINGELL, MICHIGAN
CHAIRMAN

November 20, 2007

JOE BARTON, TEXAS
RANKING MEMBER
RALPH M. HALL, TEXAS
J. DENNIS HASTERT, ILLINOIS
FRED UPTON, MICHIGAN
CLIFF STEARNS, FLORIDA
NATHAN DEAL, GEORGIA
ED WHITFIELD, KENTUCKY
BARBARA CUBIN, WYOMING
JOHN SHIMKUS, ILLINOIS
HEATHER WILSON, NEW MEXICO
JOHN B. SHADEGG, ARIZONA
CHARLES W. "CHIP" PICKERING, MISSISSIPPI
VITO FOSSELLA, NEW YORK
STEVE BUYER, INDIANA
GEORGE RADANOVICH, CALIFORNIA
JOSEPH R. PITTS, PENNSYLVANIA
MARY BONO, CALIFORNIA
GREG WALDEN, OREGON
LEE TERRY, NEBRASKA
MIKE FERGUSON, NEW JERSEY
MIKE ROGERS, MICHIGAN
SUE MYRICK, NORTH CAROLINA
JOHN SULLIVAN, OKLAHOMA
TIM MURPHY, PENNSYLVANIA
MICHAEL C. BURGESS, TEXAS
MARSHA BLACKBURN, TENNESSEE

The Honorable Kevin J. Martin
Chairman

The Honorable Michael J. Copps
Commissioner

The Honorable Jonathan S. Adelstein
Commissioner

The Honorable Deborah Taylor Tate
Commissioner

The Honorable Robert M. McDowell
Commissioner

Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Martin and Commissioners:

We are writing in regard to reports that the Commission may be contemplating expanded mandates on the cable industry, such as government-mandated *a la carte*, multicast must-carry rules, new program carriage requirements, rate regulation of leased access, invasive interactive set-top box obligations, and a judicially questioned cable ownership cap. Press stories have also indicated that the Commission may try to invoke authority over the cable industry pursuant to an excessively broad reading of the "70/70" provision from the 1984 Cable Act. Such actions are unsupported by the record of significant competition in the video programming marketplace, and would be harmful to innovation and consumers.

As some of us have pointed out before, government-mandated *a la carte*—like all unnecessary regulations—would burden consumers, especially in light of current must carry requirements. Adding multicast must-carry would inappropriately reserve yet more valuable “shelf space” on cable systems for some privileged parties at the expense of other video programming and additional voice and broadband services that may have stronger consumer demand. Moreover, the Commission has already twice rejected multicast must-carry because of statutory and constitutional concerns. Invasive program carriage obligations interfere with the ability of cable operators to package content. Onerous rate regulation of leased access makes little sense when the Commission is appropriately deregulating other cable rates as required by statute because of effective competition, and when YouTube and other Internet services provide a similar outlet on an even wider scale. Interactive set-top box mandates threaten to derail significant investments, resources, and progress in the OpenCable initiative. The cable ownership cap at issue has already been cast into doubt by the courts.

The newest proposal to invoke the 70/70 provision is inappropriate at best and contradicts the statute at worst. The 70/70 provision grants the Commission limited authority to alter its leased access rules if cable systems with 36 or more channels are available to 70 percent of households and 70 percent of those households with availability actually subscribe. Using the 70/70 provision to bootstrap some or all of these mandates or to impose new mandates not contemplated by Congress is suspect not only on legal grounds, but also on factual ones in light of recent concerns over misapplication of the data that is being invoked to trigger the provision. Application of the provision here is also counter to its intent. The 70/70 rule is meant as a tool to respond to a decrease in program diversity. Consumers now have at their fingertips an unprecedented amount of content from a large number of sources.

Today our nation enjoys access to more diverse sources of video programming than ever before. National broadcast networks ABC, CBS, NBC, and PBS now share the airwaves with networks such as FOX, CW, MyNetworkTV, Univision, and Telemundo. Cable faces intense competition from satellite providers, and cable and satellite companies offer many additional networks. Wireline phone companies have entered the video business, as well, helped in part by the Commission’s deregulatory postures on broadband and video franchising. Wireless phone companies are similarly starting to offer video content. One of the largest contributors to the video revolution is the Internet, which is giving Americans unprecedented control over what, where, and when they watch. And television viewers are not the only beneficiaries of this unbridled competition and innovation. Companies and industries are springing up everywhere to support the new technologies and services, in the process creating hundreds of thousands of jobs a year and driving a virtuous cycle of entrepreneurial creativity and economic growth.

This is no accident. Deregulatory voice, video, and data policies launched by Congress and the Commission—in some cases by you yourselves—have spurred an outpouring of investment. As a result, we are finally witnessing the long-predicted digital convergence. Almost every sector of the communications industry is jumping into each others’ businesses and, among other things, deploying facilities that are making the current video upheaval possible.

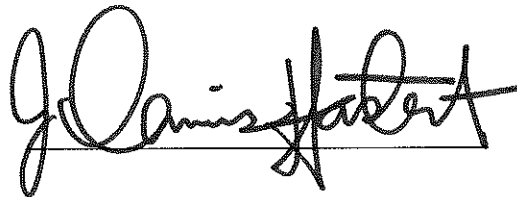
This is not the first time some of us have raised these concerns. Yet it appears the Commission is once again entertaining such proposals. Doing so would be misguided and

harmful. Please provide our Committee with written answers to the following questions by November 26, 2007. Please also put this letter in the relevant dockets.

1. Please describe all items regarding government-mandated *a la carte*, multicast must-carry, program carriage, rate regulation of leased access, interactive set-top box obligations, cable ownership, and the 70/70 provision that are currently circulating or planned for an open meeting. For each, please provide the applicable docket numbers.
2. Please describe any data the Commission has received suggesting that the 70/70 provision has been met, the source of that data, and whether that data is of the same type and source the Commission usually relies on in its annual video competition reports.

Sincerely,


Joe Barton





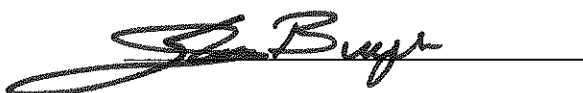














Pat Gay
Mary Bono - mile Run (m28)

John Sui

Walter J. J. J.

Sue Myrick

J. A. R.

Marsha Blackburn

John Shadegg

Doug Wolden

Tim Murphy

Greg Radanovich

Signatures

1. Rep. Joe Barton (TX-6), Ranking Member
3. Rep. Ralph M. Hall (TX-4)
5. Rep. Nathan Deal (GA-9)
7. Rep. Vito Fossella (NY-13)
9. Rep. Steve Buyer (IN-5)
11. Rep. Michael C. Burgess (TX-26)
13. Rep. Mary Bono (CA-45)
15. Rep. John Sullivan (OK-1)
17. Rep. Sue Wilkins Myrick (NC-9)
- 19.
21. Rep. John B. Shadegg (AZ-3)
23. Rep. Tim Murphy (PA-18)
2. Rep. J. Dennis Hastert (IL-14)
4. Rep. Cliff Stearns (FL-6)
6. Rep. John Shimkus (IL-19)
8. Rep. Ed Whitfield (KY-1)
10. Rep. Barbara Cubin (WY-al)
12. Rep. Lee Terry (NE-2)
14. Rep. Mike Rogers (MI-8)
16. Rep. Mike Ferguson (NJ-7)
18. Rep. Joseph R. Pitts (PA-16)
20. Rep. Marsha Blackburn (TN-7)
22. Rep. Greg Walden (OR-2)
24. Rep. George Radanovich (CA-19)